

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Michael Cornelius,) Civil Action No.: 3:14-cv-00234-MGL
)
 Plaintiff,)
)
 vs.) **ORDER AND OPINION**
)
John M. McHugh, Secretary of the)
Army,)
)
 Defendant.)

Pro se Plaintiff Michael Cornelius, filed this action on January 27, 2015, raising claims under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, against Defendant John M. McHugh, Secretary of the Army (“Defendant”). (ECF No. 1.) On November 6, 2014, Defendant filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 25.) Plaintiff filed a response in opposition on November 10, 2014, (ECF No. 29), after an order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) advising Plaintiff of the motion for summary judgment and the possible consequences if he failed to adequately respond to the motion. (ECF No. 26.) Defendant filed a reply in support of its Motion for Summary Judgment on November 20, 2014. (ECF No. 35.)

In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for consideration of pretrial matters. The Magistrate Judge prepared a thorough Report and Recommendation on May 22, 2015, which recommends that Defendant’s Motion for Summary Judgment be granted. (ECF No. 43.) The Magistrate Judge also considered

Plaintiff's non-dispositive motions for a hearing (ECF No. 30) and for reconsideration of the court's prior order denying Plaintiff's motion for sanctions. (ECF No. 40.)

Plaintiff filed objections to the Report and Recommendation on June 18, 2015 (ECF No. 48) after this Court granted Plaintiff's request for additional time to do so. (ECF No. 45 & 46.) The Report and Recommendation sets forth in detail the relevant facts and standards of law on this matter, and the Court incorporates them herein. For the reasons set forth below, this Court adopts the Report and Recommendation and Defendant's Motion for Summary Judgment is hereby granted.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

DISCUSSION

The Magistrate Judge set forth the relevant facts taken in the light most favorable to Plaintiff. (ECF No. 43 at 2.) The Magistrate Judge then fully considered Plaintiff's claims with regard to disclosure of information under the Privacy Act, specifically Plaintiff's allegation that information from certain employment-related background checks was insufficiently safeguarded and improperly disclosed. (ECF No. 43 at 5.) Upon review of the record in this case, the Magistrate Judge found that because Plaintiff cannot

demonstrate any intentional, willful, or flagrant disclosure of his personal information, no reasonable fact finder could conclude that Plaintiff's rights under the Privacy Act were violated as alleged, and that Defendant is entitled to summary judgment. (ECF No. 43 at 8.) Next, the Magistrate Judge turned to Plaintiff's denial of access to records under the Privacy Act and Denial of Information under FOIA claims, specifically Plaintiff's allegation that Defendant denied Plaintiff access to his records in violation of the Privacy Act and FOIA. (ECF No. 43 at 9.) The Magistrate Judge concluded that no reasonable fact finder could determine that Defendant denied Plaintiff access to records in violation of the Privacy Act or denied the release of records in violation of FOIA, particularly as Plaintiff failed to present any evidence that he followed Agency procedures for making a FOIA request or exercised his opportunity to review investigation information in accordance with the Privacy Act. (ECF No. 43 at 10.) Accordingly, the Magistrate Judge also recommends that Defendant's motion for summary judgment be granted as to Plaintiff's denial of access to records and denial of information claims under the Privacy Act and FOIA, respectively.

In his objections, Plaintiff claims that the Magistrate Judge ignored his case and failed to discuss his alleged FOIA and Privacy Act claims. (ECF No. 48 at 2.) This claim, however, is simply incorrect. As noted above, the Magistrate Judge fully considered each of Plaintiff's claims in light of the evidence in the record. Plaintiff further re-argues and complains about an alleged discovery violation on the part of Defendant and Plaintiff's related Motion for Sanctions which has been previously handled and even reconsidered by the Magistrate Judge. (ECF No. 48 at 3.) Finally, Plaintiff claims that the Report and Recommendation has misinterpreted and incorrectly evaluated several facts, however, the alleged factual errors suggested by Plaintiff in his objections are insufficient to alter the

Magistrate Judge's sound recommendation and legal analysis. Thus, although the Court must liberally construe Plaintiff's claims and has done so here, the Court ultimately agrees with the conclusions of the Magistrate Judge after a thorough review of Plaintiff's objections and evidence and upon consideration of the record. Plaintiff's objections are overruled.¹

CONCLUSION

The Court has carefully reviewed the objections made by Plaintiff and has conducted the required de novo review. For the reasons set forth above, Defendant's Motion for Summary Judgment is hereby granted (ECF No. 25.) Plaintiff's motion for a hearing (ECF No. 30) and motion for reconsideration (ECF No. 40) concerning Plaintiff's motion for sanctions are denied based on this Court's discretion concerning these matters and for the reasons set forth in this order and in the Report and Recommendation of the Magistrate Judge, this Court finding no error in the same.

IT IS SO ORDERED.

/s/Mary G. Lewis
United States District Judge

Columbia, South Carolina
July 13, 2015

¹On July 9, 2015 Plaintiff filed a pleading asking this Court to grant his reply and objection and to deny Defendant's motion for summary judgment based on Defendant's failure to respond to his objections to the Report and Recommendation (ECF No. 49). The Court declines to do so—Defendant is not required to file a reply to a response and in fact Local Rule 7.07 provides that replies are discouraged.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.